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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/536,771 | 12/27/2005 | Peter L. Fraenkel | 11226/008 | 2877 |
| 27879 | 7590 | 04/03/2008 | EXAMINER | |
| INDIANAPOLIS OFFICE 27879 | | | LOPIZ, FRANK D | |
| BRINKS HOFER GILSON & LIONE | | | ART UNIT | PAPER NUMBER |
| ONE INDIANA SQUARE, SUITE 1600 | | | | 3745 |
| INDIANAPOLIS, IN 46204-2033 | | | | |
| NOTIFICATION DATE | | DELIVERY MODE | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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|------------------------------|--------------------------------------|---|
| Office Action Summary | Application No. 10/536,771 | Applicant(s) FRAENKEL, PETER L. |
| | Examiner F. Daniel Lopez | Art Unit 3745 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on February 18, 2008.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 13,15,16,18,20,21 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 13,15,16,18,20,21 and 23-25 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
 6) Other: _____

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 18, 2008 has been entered.

Response to Amendment

Applicant's arguments filed January 15, 2008, have been fully considered but they are not deemed to be persuasive.

Applicant's arguments with respect to claims 13, 15, 16, 18, 20, 21 and 23 -25 have been considered but are deemed to be moot in view of the new grounds of rejection. The new grounds of rejection are necessitated by the added limitations concerning the first, second and third fluid couplings (e.g. claim 13 line 9, 11-12, 21, respectively).

Applicant focuses on the differences between Cros and Hople, and indicates that the teachings of Hople can't be used for the system of Cros, because the principle of operation of Cros would change. Applicant indicates that Cros has a closed hydraulic system, whereas Hople has the capability of being an open hydraulic system.

The examiner disagrees. Although the energy driving the pumps of Hople are different from the energy driving the pumps of Cros, both have closed hydraulic systems. And one having ordinary skill in this art would understand that the teachings of Hople, related to the closed hydraulic system, is applicable to the closed hydraulic system of Cros. The fact that Hople discloses 2 embodiments, one of which is an open circuit, does not detract from the teachings related to the closed hydraulic system.

Applicant argues that the pressure tank (8) of Hople is not a pressure balancing tank, since it is not for absorbing vibrational energy of the turbine rotor, and specifies that the purpose is for causing high pressurized fluid to flow to the low pressure reservoir 6, thereby actuating the motor 9. One having ordinary skill in this art would recognize that the pressure balancing tank of Hople is situated at the same place as the instant invention, and would therefore appear to also absorb vibration energy, just like for the instant invention, even though it has a different stated purpose. The actual purpose of the high pressure tank is to decrease the size and number of pumps pumping into the tank (column 3 line 66-68).

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claims 21 and 25 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 21 line 5 "can be" should be --is--, for a positive limitation.

Claim 25 is indefinite, since it depends from claim 21.

Claim Rejections - 35 USC § 103

Claims 13, 15, 16 and 23 are rejected under 35 U.S.C. § 103 as being unpatentable over Cros in view of Hople. Cros discloses a marine turbine installation comprising first and second turbines having respective rotors (1a, 1b) having respective output shafts (2a, 2b) and positionable in a body of water; wherein a hydrostatic transmission includes a plurality of first pumps (17, 19) coupled to each output shaft; a first fluid coupling (unmarked) between a pressure plenum (e.g. 27), connected to the fluid outlets of the pumps, and an inlet of a hydraulic motor (e.g. 6a); wherein the motor is coupled to a drive shaft (e.g. 7a) of a generator (e.g. 8a); a second fluid coupling (4a) between a return plenum (not shown, column 8 line 55-56), connected to the fluid inlets

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of the pumps, and an outlet of a hydraulic motor; but does not disclose that the motor is a pelton wheel; that a filter is coupled to a header tank for filtering water from the body of water through an intake, with a third coupling between an outlet of the header tank and the inlets to the plurality of pumps; or that a pressure balancing tank are coupled between the first pumps and the inlet of the motor.

Hople teaches, for a marine installation comprising a hydrostatic transmission including a plurality of pumps (4) having an output fluidly coupled to a pressure plenum (manifold connecting the pumps to a second main line); a first fluid coupling connecting the pressure plenum to an inlet of a hydraulic motor (9); wherein the motor is coupled to a drive shaft of a generator (10); wherein an outlet of the motor is coupled by a second fluid coupling to a return plenum (manifold connecting the first pumps to the first main line); wherein the return plenum is coupled to inlets of the first pumps; that a filter (column 4 line 23-29) is between an intake, from the body of water, and a header tank (6), wherein an outlet of the header tank is coupled to an inlet of the pumps, for providing replacement water to replace any leakage (column 4 line 19-29); that a pressure balancing tank (8) is coupled to the pressure plenum, for the purpose of decreasing the number and size of the pumps (column 3 line 66-68); and that the motor is a pelton wheel.

Since Cros and Hople are both from the same field of endeavor, the purpose disclosed by Hople would have been recognized in the pertinent art of Cros. It would have been obvious at the time the invention was made to one having ordinary skill in the art to include a filter between an intake, from the body of water, and a header tank, wherein an outlet of the header tank is coupled to the inlets of the pumps of Cros, as taught by Hople, for providing replacement water to replace any leakage; and a pressure balancing tank coupled to the pressure plenum of Cros, as taught by Hople, for the purpose of decreasing the number and size of the pumps. One having ordinary skill in the art would recognize that there is a number of ways to connect the piping between the outlet of the motor, the plenum and the header tank, including connecting a third coupling between the header tank and the plenum, thereby meeting the claimed limitations.

Since the hydraulic motors of Cros and Hople are interchangeable in the marine installation art; it would have been obvious at the time the invention was made to one having ordinary skill in the art to replace the motor of Cros with a pelton wheel, as taught by Hople, since one having ordinary skill in the art would have been able to carry out such a substitution and the results would be reasonably predictable.

Claims 18, 20, 21; 24 and 25, inasmuch as they are definite, are rejected under 35 U.S.C. § 103 as being unpatentable over Cros in view of Hople, as applied to claims 13, 15, 16; and 23 above, and further in view of WO00/50768. The modified Cros discloses all of the elements of claims 18, 20, 21, 24 and 25; but does not disclose that that the rotors are coupled to a support column fixed to a substrate lying below the body of water.

WO00/50768 teaches, for a marine turbine installation comprising turbine having a rotor (34) with an output shaft (23) and positionable in the body of water; that the turbine is coupled to a support column (1) fixed to a substrate (3) lying below a body of water (5).

Since Cros doesn't show details of how the turbine is mounted in the water and WO00/50768 does, it would have been obvious at the time the invention was made to one having ordinary skill in the art to coupled the turbine of Cros to a support column fixed to a substrate lying below a body of water, as taught by WO00/50768, as a matter of engineering expediency.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571- 272-4821. The examiner can normally be reached on Monday-Thursday from 6:10 AM -3:40 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.

/F. Daniel Lopez/

F. Daniel Lopez
Primary Examiner
Art Unit 3745
April 1, 2008